IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9554 of 2001
With
CIVIL APPLICATION No. 7473 of 2004
In
SPECIAL CIVIL APPLICATION No. 9554 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

LOK PRASANT LTD - Petitioner(s)
Versus
LEENA BEN DUSHYANTBHAI SHAH (WIFE) - Respondent(s)

==========

Appearance :
MR PALAK THAKKAR for Petitioner(s) : 1,
MS BANNA S DUTTA for Respondent(s) : 1, 1.2.1, 1.2.2, 1.2.3,1.2.4

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 04/07/2007

ORAL JUDGMENT

1. Shri Palak Thakkar, learned counsel for the petitioner; Mrs.Banna S. Dutta, learned counsel for the respondent.

2. The petitioner-establishment, being aggrieved by the award dated 23.4.2001 passed by the Presiding Officer, Labour Court, Ahmedabad in Reference LCA No. 1197/88 is before this Court with a submission that in view of the finding recorded by the Labour Court that resignation tendered by the workman was voluntary, the Labour Court could not hold that acceptance was not communicated, therefore, services of the workman could not be terminated.

3. The short facts necessary for disposal of the present writ application are that the workman filed the Reference submitting, inter alia, that the alleged resignation dated 25.9.87 was a result of pressure, coercion etc., therefore, the same was not binding upon him. He also submitted that the owner and Manager of the establishment threatened the workman of dire consequences and as the workman could not understand the things which were going on, he

signed the pre-drafted resignation. The present petitioner/establishment appeared before the Labour Court and submitted that the resignation dated 25.9.87 was voluntary, not only that but the acceptance of the same finds place in their letter dated 10.3.88 sent to the Press Workers' Union, which is a registered Trade Union.

4. The learned Labour Court, after giving its due consideration to the facts held that the resignation was voluntarily tendered but however, held that its acceptance was not communicated, therefore, the resignation never came into effect and the removal of the workman was illegal.

5. Shri Palak Thakkar, learned counsel for the petitioner submits that from the letter dated 10.3.88, it would clearly appear that the establishment had informed the Trade Union that the resignation dated 25.9.87 was accepted. According to Shri Thakkar, acceptance of the resignation is writ large in the letter dated 10.3.88 and the letter to the Trade Union would amount to communication to the workman. He also

submits that from the frame of the issue, it would clearly appear that the issue that, the resignation was accepted or not or was communicated or not, was never raised either in the pleadings or in the evidence.

6. Mrs. Banna Dutta, learned counsel for the respondent on the other hand, submits that acceptance of the resignation should have been communicated not to the Trade Union but to the workman and in the present case, undisputedly, the resignation has not been communicated to the workman, the resignation would not come into effect.

7. So far as the voluntariness of the resignation is concerned, the findings recorded by the court below have not been challenged by the workman, therefore, this Court must hold that the resignation was voluntary resignation.

8. So far as its acceptance and communication are concerned, the letter dated 10.3.88 would stare in the eyes of the workman. Present is not a case where acceptance of the resignation was communicated to a third party, in the present

case, acceptance of the resignation has been communicated to the parent body or Trade Union of which the workman is a member. Acceptance of the resignation was conveyed to the Trade Union much before the Reference came to be filed. It is not the case of the other side that such letter was not written and letter has been manufactured or concocted. Even otherwise, communication of the letter or its acceptance was not a dispute raised by the workman.

9. Taking into consideration that the dispute relating to acceptance of the communication of the resignation letter was never raised and that the letter dated 10.3.88 communicates acceptance, I must hold that the court below was unjustified in holding that the resignation never came into effect.

10. The award made by the Labour Court deserves to and is accordingly set aside and quashed. The petition is allowed. Rule is made absolute accordingly. No costs.

11. As the petition is allowed and the award is set aside, orders on application seeking benefits

under Section 17-B of the Industrial Disputes Act, 1947, are not required. The said application is rejected.

[R.S. GARG, J.]

pirzada/-